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## **HUMAN RIGHTS COMMISSION:**

**The Joint Venture of Stacy and  
Witbeck/Esquivel Met the  
Minority Business Enterprise  
Participation Goals in Its  
Contract With the  
Department of Public Works**



Audit Number 01077  
July 14, 2003





Edward Harrington  
Controller

Monique Zmuda  
Deputy Controller

July 14, 2003

Audit Number 01077

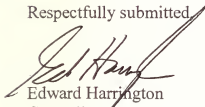
Edwin Lee, Director  
Department of Public Works  
City Hall, Room 348  
San Francisco, CA 94102

Dear Mr. Lee:

The Office of the Controller presents its audit report concerning whether Stacy and Witbeck/Esquivel a Joint Venture (joint venture) met the participation commitment for its minority business partner, Esquivel Grading and Paving (Esquivel). The joint venture has a construction contract with the Department of Public Works (DPW) of the City and County of San Francisco (City) to remove track and renovate pavement in specified streets of the City. To comply with the San Francisco Administrative Code, we conducted this audit to verify whether the joint venture met the contracted commitment for Esquivel to perform 40 percent of the work performed by the joint venture. The report indicates that the joint venture met the commitment because the joint venture paid Esquivel 47 percent of the joint venture's costs in performing the joint venture's bid items.

The Department of Public Works' response and the Human Rights Commission's response are attached to this report. The Controller's Audits Division will work with both departments to follow up on the status of the recommendations made in this report.

Respectfully submitted,



Edward Harrington  
Controller



# INTRODUCTION

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## BACKGROUND

The Department of Public Works (DPW) of the City and County of San Francisco (City) entered a contract on June 16, 1999, with Stacy and Witbeck/Esquivel a Joint Venture (joint venture) for track removal and pavement renovation in specified streets of the City. Esquivel Grading and Paving (Esquivel), a partner in the joint venture, qualifies as a certified minority business enterprise (MBE) under the San Francisco Administrative Code (Administrative Code), Chapter 12D.

Known as the Minority/Women/Local Business Utilization Ordinance (ordinance), Chapter 12D is intended to correct identified discriminatory practices inherent in the City's procurement processes and in the awarding of prime contracts to minority and women business enterprise contractors. The ordinance establishes various bid discounts for joint ventures that have minority-owned, women-owned, or local business enterprises as joint venture partners. A bid discount is a reduction in the price of the bid for comparison purposes only so that the contractor's bid is more favorable when compared to the other bids. The ordinance requires the City's contract-awarding authorities to make good-faith efforts to solicit and obtain bids from business enterprises owned by minorities and women.

Under the ordinance, the director of the Human Rights Commission (HRC) is to keep a database, the Citywide Diversity Tracking System, to report on the progress each city department has made towards the achievement of the participation goals for minority and women business enterprises. In addition, HRC's rules and regulations require city departments to enter into this database accurate and complete information for their contracts on a timely basis.

To qualify as a MBE under the ordinance, businesses like Esquivel must receive certification from HRC, which determines whether the enterprise is an economically disadvantaged, local business that is owned and controlled by one or more minority persons. For the City's contracts with joint ventures that include at least one certified MBE partner, the joint venture must commit to how the MBE partner will participate in the joint venture to qualify for the bid discount.

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The joint venture committed to Esquivel's performing specified bid items for DPW's contract. In its bid, the joint venture estimated that the bid items to be performed by Esquivel would cost \$448,128, or 40 percent of the \$1,119,162 in bid items that would be performed by the joint venture. The joint venture committed an additional \$696,460 for work that would be performed by subcontractors. Because Esquivel's planned participation in the joint venture equaled or exceeded 40 percent, the joint venture received the 7.5 percent bid discount specified in the ordinance. The joint venture completed its work on July 21, 2000, and on October 10, 2000, DPW accepted the work performed by the joint venture under the contract.

## **SCOPE AND METHODOLOGY**

The Administrative Code, Chapter 12D, defines minority and women business enterprises for purposes of city contracts and requires the HRC director, in cooperation with the Office of the Controller, to audit 10 percent of the joint ventures granted bid discounts each fiscal year. The purpose of these audits is to ensure that joint ventures properly met their commitments to use minority-owned, women-owned, or local business enterprises as joint venture partners. In cooperation with Human Rights Commission staff, we randomly selected for audit the contract between the City and Stacy and Witbeck/Esquivel a Joint Venture.

Specifically, we determined whether Esquivel, the joint venture's MBE partner, participated in the contract according to participation levels committed to by the joint venture and whether Esquivel actually performed the work. We also analyzed the accuracy and completeness of key information in the Citywide Diversity Tracking System (system). The audit period was June 16, 1999, through June 30, 2002.

To conduct the audit, we verified whether HRC certified Esquivel as a MBE when DPW awarded the contract. To determine whether Esquivel properly participated in the contract and whether it had achieved the contract's participation goals, we reviewed the joint venture's operating procedures and records, as well as Esquivel's records. We determined whether the joint venture had paid Esquivel for the bid items that Esquivel had committed to complete. To determine whether Esquivel performed the work specified, we reviewed a sample of Esquivel's records, including payroll records, daily work reports, and supplier invoices.



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Additionally, we conducted interviews with personnel of DPW and with staff of each joint venture partner. To evaluate the information in the Citywide Diversity Tracking System, we reviewed key information that DPW entered in the system and investigated any discrepancies.



# AUDIT RESULTS

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## **THE JOINT VENTURE MET THE PARTICIPATION REQUIREMENT FOR ITS MINORITY BUSINESS ENTERPRISE PARTNER**

Stacy and Witbeck/Esquivel a Joint Venture (joint venture) met its MBE participation commitment by paying Esquivel Grading and Paving (Esquivel), its minority business partner, 47 percent of the costs that the joint venture incurred for performing bid items in its contract with DPW. The joint venture committed to Esquivel performing 40 percent of the bid items to be performed by the joint venture. Our tests showed that the joint venture incurred costs of \$748,655 to perform all of its bid items. The joint venture paid Esquivel a total of \$527,004. Of this amount, the joint venture paid Esquivel \$350,129 (47 percent) for Esquivel's work on the bid items the joint venture performed. The remaining amount of \$176,875 was Esquivel's share of the profit.

We found sufficient evidence that Esquivel performed the work for which it received payment. We tested a sample of Esquivel's daily work reports, which lists the employees and equipment used on the project for the day. For the four days tested, we found that the employees listed on the daily work reports were also listed on Esquivel's payroll records. In addition, we determined on a sample basis that the equipment Esquivel listed on the daily work reports was either owned or rented by Esquivel and that this equipment was appropriate for Esquivel's work under this contract.

## **DPW GENERALLY ENTERED COMPLETE, ACCURATE INFORMATION IN THE CITYWIDE DIVERSITY TRACKING SYSTEM**

Although DPW correctly entered in the Citywide Diversity Tracking System (system) most information related to its contract with the joint venture, DPW did not record the amount the joint venture paid to each joint venture partner when the joint venture submitted the exit report at the end of the contract. In addition, we found that the total amount of contract payments listed in the system was inaccurate because of a system error.



The system showed that all contract payments were paid only to the joint venture, and the system did not show any payments made to the joint venture partners. This occurred because the joint venture did not report the amount it intended to pay to each joint venture partner when the joint venture submitted HRC Form 7, Contractor/Joint Venture Partner and Subcontractor Participation Report. As a result, the DPW clerk did not have the information for it to enter the amounts. Upon completion of the project, the joint venture submitted the HRC Form 8, Contractor Exit Report and Affidavit. In Form 8, the joint venture specified the amount it paid to the MBE joint venture partner, but did not specify the amount paid to the other joint venture partner. However, the DPW clerk responsible for entering information in the system did not enter the payment to the MBE joint venture partner in the system. The DPW clerk stated DPW does not have a procedure for making adjustments to the system when the system has no history of payments to the contractor, even though the Form 8 shows an amount for a contractor.

We also found that the total contract payment amount in the system was inaccurate due to a system error. The system showed that the contract payments totaled \$1,858,830; however, the correct amount should be \$1,960,569. The \$101,739 difference is due to the system not recording contract payments made from the retention account in the City Controller's Financial Accounting and Management Information System (FAMIS). This has been an ongoing problem that has been documented in prior audits that we have performed on the Human Rights Commission's behalf. The Department of Telecommunications and Information Services (DTIS) programmer responsible for this system stated that while there are no current plans to fix this problem, DTIS is aware of the problem and intends to fix it when the Human Rights Commission, for whom the system was developed, provides the funding.

## **RECOMMENDATIONS**

To fully comply with the Minority/Women/Local Business Utilization Ordinance in the San Francisco Administrative Code, the Department of Public Works should ensure that the responsible staff enters complete and accurate information into the Citywide Diversity Tracking System for each of its contracts.

To ensure that the system contains complete information on contract payments, the Human Rights Commission should consider



having DTIS fix the system so that it records contract payments made from the retention account in the City's accounting system.

We conducted this review according to the standards established by the Institute of Internal Auditors. We limited our review to those areas specified in the audit scope section of this report.

Staff: Ben Carlick, Audit Manager  
Edwin DeJesus





# DEPARTMENT OF PUBLIC WORKS RESPONSE TO THE AUDIT

City and County of San Francisco



Willie Lewis Brown, Jr., Mayor  
Edwin M. Lee, Director



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Department of Public Works  
Deputy Director for  
Financial Management and Administration  
1 Dr. Carlton B. Goodlett Place, Room 340  
San Francisco, CA 94102  
Robert J. Carlson, Deputy Director

July 9, 2003

TO: Ben Carlick  
FROM: Robert Carlson  
SUBJECT: DPW Response to the Controller's Audit of the  
Joint Venture of Stacy and Witbeck/Esquivel

Below is our response to the above mentioned draft audit report. Thanks for the opportunity to respond and let us know if you have any questions.

## AUDIT RESPONSE:

We agree that accurate information should be entered into the Citywide Diversity Tracking System. In this case, we could only enter the information as given on the HRC Forms 7 and 9 that we received.

Several issues surface regarding this matter:

**Issue No. 1:** The accuracy and completeness of the information on HRC Form 7 needs to be ensured. There is no assurance that all contractors will be filling out the forms accurately.

1. This form should show the amounts for the initial, year-to-date and current invoice for the contractor, joint contractor and all subcontractors, whether WBE's, MBE's or not.
2. If an HRC Form 9 shows a different amount for a subcontractor, the next HRC Form 7 needs to be adjusted to reflect this change.

**Issue No. 2:** Clear procedures for handling certain entries and/or exceptions encountered on HRC forms should be set up:

1. If a subcontractor is shown on the HRC Forms 7 or 9 for which we did not get a formal substitution (assuming the amount contributed is more than the .005% requirement), no formal procedures have been set up for this situation.
2. If the HRC Form 8 shows cumulative information different from the monthly Forms 7 and 9 received, there are no procedures to handle this situation. We cannot just arbitrarily change information from previous entries into the DTS system since this would make the detailed or monthly information inaccurate. All entries should be based on whatever the contractor submits since they will be answerable for their performance

## Recommendations:

1. We propose that HRC direct DTIS to provide a system solution to enable departments to input any adjustments required to record the last payment in accordance with HRC Form 8. Currently, we would be forced to change each monthly payment distribution to conform to Form 8 amounts, as required in this audit. In complying with the audit requirement to adjust the prior months' payment allocations to match the HRC Form 8 Exit Report, we note that adopting such practices could mask information that may warrant further investigation and leave the department

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vulnerable to unknowingly participating in fraudulent activities if the contract were not selected for audit.

2. We will send out a formal reminder to our contract managers to ensure that all HRC Form 7's list all contractors, joint venture partners and subcontractors, whether they are MBE's or WBE's or not. Any new subcontractors should be listed at the bottom of the form and substitutions noted on the form.
3. Formal procedures should be drawn up by HRC for these issues and disseminated to all City departments entering data into DTS.
4. Formal training sessions on expectations from contractors should be conducted by HRC to ensure that all these forms are being accurately and consistently filled out.
5. We recommend that all prime contractors submit a completed initial Form 7 at the pre-construction meeting or prior to commencing the work so the Construction Manager may forward the information to HRC for review approval. If HRC approves of the list, there should be no reason for inaccurate information be reported into the DTS system.

RJC:isp

c: Chron. File



# HUMAN RIGHTS COMMISSION RESPONSE TO THE AUDIT

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## City and County of San Francisco



Willie Lewis Brown, Jr.  
Mayor

## Human Rights Commission

Contract Compliance  
Dispute Resolution/Fair Housing  
Minority/Women/Local Business Enterprise  
Lesbian Gay Bisexual Transgender & HIV Discrimination

Virginia M. Harmon  
Executive Director

June 27, 2003

Ben Carlick  
Audit Manager  
Office of the Controller  
City Hall, Room 388  
1, Dr. Carlton B. Goodlett Place  
San Francisco, Ca 94102

**Subject: Response to Audit Report Number 01069**

Dear Mr. Carlick:

Thank you for giving us this opportunity to respond to your audit report number 01077 concerning contract DPW 1362N Various Locations South of Market Street Track Removal & Pavement Renovation Phase 2.

We agree with the findings and recommendation, and, as soon as funds become available, we plan to ask DTIS to enhance the Diversity Tracking System in order to record contract payments made from the retention amount in the City's accounting system. As you know, this has been in our plans for some time. However, HRC continues to have extensive data requirements and a very limited budget.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Harmon", written over a horizontal line.

Virginia Harmon  
Executive Director



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Human Rights Commission







